



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC205]

Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act; Draft Revisions to Procedural Directive (NMFS PD 02-204-01)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) solicits public comments on draft revisions to the Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act (NMFS Procedural Directive (PD) 02-204-01).

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: The draft revisions to the Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act (NMFS PD 02-204-01) are available at: <https://www.regulations.gov/docket/NOAA-NMFS-2022-0081>. You may submit comments on the draft revisions, through the Federal e-Rulemaking Portal:

1. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0081 in the Search box.
2. Click the “Comment” icon, and complete the required fields.
3. Enter or attach your comments.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the comment period. Due to delays in processing mail related to COVID-19 and health and safety

concerns, no mail, courier, or hand deliveries will be accepted. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter may be publicly accessible. NMFS will also accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Eric Patterson, NMFS Office of Protected Resources, (301) 427-8415, Eric.Patterson@noaa.gov; or Zachary Schakner, NMFS Office of Science and Technology, 301-427-8106, Zachary.Schakner@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial stock assessment reports (SARs) were completed in 1995.

NMFS convened a workshop in June 1994, including representatives from NMFS, FWS, and the Marine Mammal Commission (Commission), to draft guidelines for preparing SARs. The report of this workshop (Barlow *et al.*, 1995) included the guidelines for preparing SARs and a summary of the discussions upon which the guidelines were based. The draft guidelines were made available, along with the initial draft SARs, for public review and comment (59 FR 40527; August 9, 1994) and were finalized August 25, 1995 (60 FR 44308; August 25, 1995).

In 1996, NMFS convened a second workshop (referred to as the Guidelines for Assessing Marine Mammal Stocks, or “GAMMS,” workshop) to review the guidelines and recommend changes, if appropriate. Workshop participants included representatives from NMFS, FWS, the Commission, and the three regional scientific review groups (SRGs). The report of that workshop (Wade and Angliss, 1997) summarized the discussion at the workshop and contained revised guidelines. The revised guidelines represented minor changes from the initial version. The revised guidelines were made available for public review and comment along with revised stock assessment reports on January 21, 1997 (62 FR 3005; January 21, 1997) and later finalized.

In September 2003, NMFS again convened a workshop (referred to as GAMMS II) to review guidelines and again recommend minor changes. Participants at the workshop included representatives of NMFS, FWS, the Commission, and the regional SRGs. Changes to the guidelines resulting from the 2003 workshop were directed primarily toward identifying population stocks and estimating PBR for declining stocks of marine mammals. The revised guidelines were made available for public review and comment on November 18, 2004 (69 FR 67541), and the revisions were completed and finalized on June 20, 2005 (70 FR 35397).

In February 2011, NMFS convened another workshop (referred to as GAMMS III) to review guidelines for preparing SARs and again recommended changes to the guidelines. Participants at the workshop again included representatives from NMFS, FWS, the Commission, and the three regional SRGs. The objectives of the GAMMS III workshop were to (1) consider methods for assessing stock status (*i.e.*, how to apply the PBR framework) when abundance data are outdated, nonexistent, or only partially available; (2) develop policies on stock identification and application of the PBR framework to small stocks, transboundary stocks, and situations where stocks mix; and (3) develop consistent national approaches to a variety of other issues, including

reporting mortality and serious injury information in assessments. Nine specific topics were discussed at the workshop. The deliberations of these nine topics resulted in a series of recommended modifications to the guidelines. The main body of the GAMMS III workshop report included summaries of the presentations and discussions for each of the agenda topics, as well as recommended revisions to individual sections of the guidelines (Moore and Merrick, 2011). Appendices to the workshop report provided a variety of supporting documents, including the full draft revision of the guidelines (Appendix IV). The revised guidelines were made available for public review and comment on January 24, 2012 (77 FR 3450), and revisions related to seven of the nine topics were finalized on March 2, 2016 (81 FR 10830) as a NMFS Procedural Directive (NMFS PD 02-204-01) for the first time.

In July 2020, NMFS once again began efforts to review and possibly revise the guidelines, with a focus on addressing some topics identified in the GAMMS III workshop but not finalized in 2016. In addition, per the NMFS Policy Directive System, the guidelines were scheduled for review in February 2021. Due to the COVID-19 pandemic and the targeted nature of the revision effort, an in-person workshop was not held as was typical in the past. Instead, an internal working group reviewed the guidelines and developed draft revisions, as appropriate. The working group identified eight topics that warranted potential revisions, a summary of which is provided below.

Topic 1 relates to revising the guidelines to incorporate and reference NMFS Procedural Directive: Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act (NMFS PDS 02-204-03). NMFS PDS 02-204-03, which was finalized in 2019, established NMFS procedure for reviewing and designating stocks in the development of the SARs, including how stock designations relate to demographically independent populations (DIPs), as well as distinct population segments (DPSs) in cases where marine mammals are also listed as DPSs under the

Endangered Species Act (ESA). The draft revisions summarize NMFS PDS 02-204-03 and incorporate the directive by reference. They describe the distinction between the delineation of DIPs and the designation of stocks and remove text that is no longer relevant as it relates to defining stocks, which is replaced with direction to rely on Martien *et al.* (2019) for DIP delineation and NMFS PDS 02-204-03 for stock designation. The draft revisions also provide additional guidance on how to define ranges given the possible DIP delineation and resulting stock designation outcomes. Finally, the draft revisions remove text on prospective stocks that was deemed no longer relevant given the process laid out in NMFS PDS 02-204-03.

Topics 2 and 3 relate to the calculation of the minimum population abundance (N_{min}) in post-survey years (Topic 2), and to address sources of bias (Topic 3), respectively. Previous versions of the guidelines state that if eight years have transpired since the time of an abundance survey, N_{min} is considered unknown. This creates a challenge for managing stocks. The draft revisions remove the 8-year expiration of abundance data for use in calculating N_{min} . They provide additional detail on the survey frequency assumed in the original PBR performance testing scenarios conducted by Wade (1998) and note that if survey data are older than was assumed in these scenarios, N_{min} should be adjusted to account for uncertain post-survey abundance changes. The draft revisions provide a non-exhaustive list of potential options for making such adjustments to N_{min} and note that at some point even with adjustments, N_{min} will become unreliable and should be considered unknown on a case-by-case basis.

Topic 4 relates to designating stocks as strategic and related recovery factors. The MMPA defines the term “strategic stock” as a marine mammal stock: (A) for which the level of direct human caused mortality exceeds the potential biological removal (PBR) level; (B) which is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future; or (C) which is listed as a threatened species or

endangered species under the ESA or is designated as depleted under the MMPA. While applying criterion A or C may be relatively straightforward, applying criterion B is more subjective and previous versions of the guidelines did not provide any guidance related to criterion B. The draft revisions provide explicit guidelines for making strategic determinations based on each part of Section 3(19) of the MMPA (A-C). For Section 3(19)(A), the draft revisions provide direction for how to assess strategic status given varying levels of information on the minimum population size, which is necessary for calculating the PBR level, and human-caused mortality and serious injury (M/SI). For Section 3(19)(B), the draft revisions direct SAR authors to rely on information to be included in the SAR on the stock's trend and whether the stock is proposed to be listed under the ESA to inform strategic status. Finally, the draft revisions provide straightforward guidelines for determining strategic status under Section 3(19)(C) based on a stock's current depleted status under the MMPA and listing under the ESA.

Topic 5 focuses on improving language related to quantifying and including unobserved mortality and serious injury. In recent years, estimates of unobserved or "cryptic" mortality of marine mammals, particularly of large whales, have been developed and in some cases, have been incorporated into the SARs. However, previous versions of the guidelines did not provide guidance specific to incorporating this information and whether or not it should be considered and counted against PBR. The draft revisions summarize the concept of undetected mortality and the state of the science as it relates to estimating undetected mortality in marine mammals and its inclusion in SARs. They then provide specific guidance directing SAR authors to correct human-caused M/SI estimates for undetected mortality using the best available scientific information when possible and include several examples of how this may be accomplished. The draft revisions also provide guidance on using data from other stocks

and how to appropriately deal with apportioning undetected mortality by cause, various biases that may exist, and multiple estimates of human-caused M/SI.

Topic 6 relates to providing further guidance on the inclusion and incorporation of information on climate change, biologically important areas, and habitat issues. Inclusion of information on the effects of climate change in SARs has been a subject of discussion among SRGs. In addition, NMFS is in the process of completing climate vulnerability assessments for marine mammal stocks (Lettrich *et al.*, 2019), and efforts are underway to update guidance on using climate information in various ESA and MMPA contexts. Somewhat related, for endangered/threatened stocks, the SARs generally include information about critical habitat designations, while SARs may or may not include a description of biologically important areas when identified for a stock. The draft revisions provide a new section entitled “Habitat Issues,” which is mentioned in the current version of the guidelines as a possible section in the SARs, but with little specific guidance. The draft revisions provide guidance on the purpose of the habitat issues section of a SAR (to highlight habitat issues affecting the status of the stock), and when such a section may be warranted. They describe the type of information and level of detail that should be included in this section. The draft revisions focus on strategic stocks, given the requirements of the MMPA, but note that in some cases, a habitat issues section may be included for non-strategic stocks when warranted.

Topic 7 clarifies expectations regarding peer-review of information included in SARs. Previous recommendations from the SRGs indicated that the peer-review expectations for information included in the SARs are not clearly laid out in the current guidelines. The draft revisions provide two new sections entitled “Ensuring Appropriate Peer Review of New Information” and “Ensuring Appropriate Quality Assurance and Quality Control.” The first section summarizes NOAA’s mandates to include the best available scientific information in the SARs and provides direction for how this

requirement may be met when including new information in draft SARs. It then describes three levels of peer review and how the different types of new information that may be included in the SARs fit into each level, with specific direction given on what level of review should be considered in each circumstance. The second section directs SAR authors to ensure draft SARs follow appropriate Quality Assurance and Quality Control procedures.

Finally, Topic 8 relates to data sources and criteria used for documenting human-caused mortality and serious injury. Implementation of the 2016 guidelines resulted in some inconsistencies in how SARs report information on human-caused M/SI and the criteria used for such information. Such inconsistencies have led to differing estimates of human-caused M/SI among SARs and other NMFS documents. Additionally, under the previous guidelines, there was a lack of consistency in the SARs regarding human-caused injuries, especially fishery entanglements/ingestions, that were determined to not be seriously injured and therefore not counting against PBR, particularly when there was intervention. The draft revisions modify the existing section titled “Annual Human-caused Mortality and Serious Injury.” Specifically, the draft revisions divide this section into several new sections including sections on “Undetected Mortality and Serious Injury” (see Topic 5 above), “Incidental Commercial Fishery Mortality and Serious Injury,” and “Other Sources of Human-Caused Mortality and Serious Injury (Including Foreign Fisheries and Non-commercial U.S. Fisheries),” and this now includes the existing “Mortality Rates” section. Within these sections, the draft revisions provide additional guidance on the data sources and criteria that should be considered when determining what constitutes the best available scientific information regarding human-caused M/SI. The draft revisions also provide details on how to include information on non-serious injuries, including serious injuries that were averted due to intervention.

In addition, other minor revisions were made to improve readability, formatting, and clarity, and ensure consistency with ongoing efforts to revise NMFS Serious Injury Procedural Directive (NMFS PD 02-038-01). The full draft revised Procedural Directive is available at: <https://www.regulations.gov/docket/NOAA-NMFS-2022-0081>. NMFS solicits public comments on the draft revisions.

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